

MINUTES OF MEETING OF THE CORPORATIONS COMMITTEE

October 8, 2004

A regular meeting of the Corporations Committee (the "Committee") of the Business Law Section of the State Bar of California was held at the Portola Plaza Hotel, Monterey, California, on October 8, 2004. Attendance was as follows:

MEMBERS PRESENT:

Keith Paul Bishop
James K. Dyer, Jr.
James F. Fotenos
Matthew R. Gemello
Steven K. Hazen
Mark T. Hiraide
Brian D. McAllister
William R. Sawyers
David M. Serepca
Teri L.K. Shugart
Lemoine Skinner III
Steven B. Stokdyk
Daniel J. Weiser
Suzanne L. Weakley
Nancy H. Wojtas

MEMBERS ABSENT:

Curt C. Barwick
John C. Carpenter
Victor Hsu
Brian A. Lebrecht
Stewart Laughlin McDowell
Cynthia Ribas
Deborah J. Ruosch

FOR EXECUTIVE SESSION, BY TELEPHONE:

Curt C. Barwick
Victor Hsu
Stewart Laughlin McDowell
Brian Wong

EXCUSED FROM EXECUTIVE SESSION:

Dave Marion
Steve Harmon
George Stepanenko

LIAISONS AND GUESTS PRESENT:

Betsy Bogart, Secretary of State (by telephone)
Rosalind Tyson, SEC (by telephone)
George Stepanenko, Department of Corporations
Colleen Monahan, Department of Corporations (by telephone)
Neil Wertlieb, Executive Committee, Southern California Liaison
John Weber, NASD (by telephone)
Dave Marion, guest
Steve Harmon, guest
Jennifer L. Sostrin, guest
Russell J. Wood, guest

The minutes summarize discussions primarily in the order items were listed on the Agenda for the meeting previously circulated to members of the committee, which is not necessarily the order in which the items were actually taken up at the meeting. The committee did not take up those topics listed on the Agenda that are not described in these minutes.

I. ADMINISTRATIVE MATTERS

1. Opening Remarks and Announcements: The meeting was called to order by Co-Chairs Hazen and Wojtas. Mr. Hazen welcomed our visitors, and two attorneys who are joining the Committee introduced themselves and provided a brief background on their legal experience.

II. REGULATORY/SUPERVISORY

1. Secretary of State: Betsy Bogart mentioned two pieces of legislation that passed: AB1000 that amends AB55 and was effective 9/27/04, and AB1859 (short form corporation cancellation) and is effective 1/1/2005. Ms. Bogart reiterated that UCC Connect is now up and running, and UCC filings can now be made online at uccconnect.com.
2. Securities and Exchange Commission: Rosalind Tyson discussed enforcement statistics for 2004. There were between 640 and 650 cases in 2004, which was slightly lower than the number of cases in 2003 (679). There were \$2 billion in disgorgements in 2004, and \$1 billion in penalties. The Pacific Region of the SEC has hired a new associate in its enforcement division – Nels Mitchell. Last, the SEC is working on how to deal with all the extra filings it is receiving, e.g., supplemental materials, requests for confidential treatment. EDGAR will be able to handle all the additional materials.
3. Department of Corporations: Colleen Moynihan discussed recently signed legislation: AB1000 (clean-up legislation for AB55), AB2167 (provides investors greater remedies against broker dealers), AB2693 (additional protections for borrowers), AB2921 (franchise committee's bill) and AB3070 (requiring investment advisors to participate in the IARD). Ms. Moynihan then discussed legislation opposed by the Department and vetoed by the Governor: SB1406 (revision to usury provisions) and SB1508 I(restrictions on lenders). The comment period for filing online under 25102(f) ends in about one week. Ms. Moynihan noted that the only concern the Department knows about is attorneys' reluctance to use their credit cards for filing. Other rules out for comment concern church debt offerings and clarifying entity conversions. Ms. Moynihan announced that the Commissioner had created a new division of financial education, with four programs: (1) senior fraud, (2) TAPS program (preventing predatory practices inflicted on the military), (3) partner with district attorneys on prosecuting financial fraud cases and (4) financial education curriculum for high school students. Ms. Moynihan noted that the Department oral arguments in front of the Ninth circuit were about to begin in the National City Mortgage and Wells Fargo litigation, and that on

December 31, 2004, a new regulatory law becomes effective that requires pay day lenders to be licensed.

George Stepanenko discussed the electronic filing proposal for 25102(f) notices and how important this initiative is to the Department, as electronic filing saves time and reduces the Department's error rate.

4. NASD: John Weber advised the Committee of Notice to Members 4-71, that discusses amending Rule 3010 and the creation of Rule 3012 to conform certain parts of the NASD's new rule requirements to the New York Stock Exchange's recently approved internal control amendments. Mr. Weber also discussed Notice to Members 4-72, which covers the use of negative response letters to change the broker-dealer of record on a mutual fund or variable insurance product account – firms must now get affirmative consent from a customer to make a change. Mr. Weber noted that the NASD Fall Conference was being held this week in Rancho Mirage, and that there was a regional position open at the NASD.

III. TIME SENSITIVE PROJECTS

1. Guide to Organizing A California corp. Teri Shugart noted that a draft of the entire Guide had been circulated to members of the Committee earlier in the week, that an editing committee was being formed, that when the editing committee had been established, comments on the circulated draft would be solicited from the committee, and that a final draft would then result.

IV. LEGISLATION/AFFIRMATIVE LEGISLATIVE PROPOSALS

1. The Committee expressed appreciation to Brian McAllister for his work on AB 1306. The Committee discussed how the new law works.
2. Mr. Fotenos gave a presentation of the highlights of the past year in legislation of interest to the Committee.
3. Mr. Fotenos noted that a legislative proposal was coming to allow unanimous consent without the unanimous consent of interested directors (amending § 307(b) of the Corporations Code).
4. The Committee discussed possible changes to the requirements of what information must be disclosed on an information statement, e.g., to match federal law on how to list the five most highly compensated individuals. discuss.
5. The Committee expressed appreciation for Brian Wong's work on AB2752, the director nomination rule. After Mr. Wong wrote about this legislation, it got appropriately amended.

V. LIAISON REPORTS

1. Executive Committee: Neil Wertlieb shared ExCom's thoughts on the Committee's Opinions Report.

VI. EXECUTIVE SESSION

1. The committee discussed the timing and content of the Opinions Report.
Jim Fotenos asked the Committee to approve a memo dated October 5, 2004 addressed to the Executive Committee, and the Committee approved it.

VII. BUSINESS/INFORMATIONAL/CLOSING

1. The Committee reviewed the status of its ongoing projects.
2. Brian McAllister discussed his and Mr. Fotenos' proposed agenda for this Committee for the 2004-2005 year.
3. Ms. Wojtas and Mr. Hazen made closing remarks, and Mr. Fotenos gave thanks and gifts to committee members whose terms were ending.
4. The Committee adjourned at 12 noon.

Submitted by Teri L.K. Shugart, Assistant Secretary